8a

Notice of Motion.

Admiralty Libel No. 186-206 commenced prior to this action seeks the same relief as is sought herein.

Dated, New York, May 31, 1956.

BLEAKLEY, PLATT, GILCHRIST & WALKER

By DENNIS P. DONOVAN
A Member of said Firm.
Attorneys for Defendants herein,
Office and Post Office Address:
120 Broadway, Borough of Manhattan,
New York 5, N. Y.

(13) To:

SIDNEY ROFFMAN, Esq.,
Attorney for Plaintiffs,
225 Broadway,
New York 7, New York

COOPER, OSTRIN & DE VARCO, Esqs.,
Of Counsel,
655 Madison Avenue,
New York, New York

PLEASE TAKE NOTICE that the undersigned will bring the above motion on for hearing before this Court, at Room 506, United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 19th day of June, 1956, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.
Dated, New York, May 31, 1956.

BLEAKLEY, PLATT, GILCHRIST & WALKER

By DENNIS P. DONOVAN
A Member of said Firm.
Attorneys for Defendants herein,
Office and Post Office Address:
120 Broadway, Borough of Manhattan,
New York 5, N. Y.

Affidavit of Dennis P. Donovan, Read in Support of Motion.

[Same Title.]

(14) State of New York }
County of New York } ss.:

Dennis P. Donovan, being duly sworn, deposes and says that:

1. He is an attorney at law and a member of the firm of Bleakley, Platt, Gilchrist & Walker, attorneys for the defendants herein, and is fully familiar with the facts and prior proceedings heretofore had herein. This affidavit is made by deponent rather than defendants due to the fact that both defendants are foreign corporations.

2. This affidavit is made in support of defendants' motions to dismiss the complaint herein on the grounds that plaintiffs have heretofore elected to proceed in Admiralty, and on the further grounds that there is another prior action pending for the relief sought herein.

3. On September 21, 1955, there was filed a libel action in this Court involving the same parties and setting forth the same alleged causes of action as are set forth in the complaint herein. The libel was served on September 22, 1955, as is indicated by the Marshal's return filed on September 29, 1955. The libel is numbered Admiralty No. 186-206. A copy of the libel and citation are annexed hereto (15) and made a part hereof and marked Exhibit A.

4. On October 25, 1955, the complaint herein was filed and the summons issued. The Marshal's return indicates that the summons was served on October 26, 1955. A copy of the summons and complaint in this action are annexed hereto and made a part hereof, and marked Exhibit B.

Affidavit of Dennis P. Donovan, Read in Support of Motion.

5. The prosecution of this second action will cause inconvenience to the defendants and is unduly harassing.

WHEREFORE, your deponent respectfully prays that defendants' motion to dismiss the complaint herein be granted.

DENNIS P. DONOVAN

Sworn to before me this
1st day of June, 1956.

LEE H. TURNER
Notary Public

LEE H. TURNER
Notary Public, State of New York
No. 24-9399350
Qualified in Kings County
Commission Expires March 30, 1958

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

Citation AD-186-206.

(16) THE PRESIDENT OF THE UNITED STATES OF AMERICA TO THE MARSHAL OF THE SOUTHERN DISTRICT OF NEW YORK—GREETING:

WHEREAS a libel was filed in the United States District Court for the Southern District of New York, on September 21st, 1955 by

EVELYN MC AFOOS and WILLIAM NEFF,
Libellant,

against

THE CANADIAN PACIFIC STEAMSHIPS, LTD., and
THE CANADIAN PACIFIC RAILWAY CO.,
Respondents:

in a certain cause civil and maritime for damages for Personal Injuries, etc. therein alleged to be due and owing to the said Libellant, amounting to $175,000. and praying that a citation may issue against the said Respondents pursuant to the rules and practice of this Court.

NOW THEREFORE WE DO HEREBY COMMAND YOU, the said Marshal, to cite and admonish the said Respondents, if found in your District, to be and appear before the said District Court, on the 4th day of October, 1955, at 10:00 A. M. at the office of the Clerk thereof, in the U. S. Courthouse, in the Borough of Manhattan, City of New York, then and there to file appearance and stipulation for costs, and to answer or except to said Libel within three weeks thereafter, otherwise the Libellant may enter an interlocutory or final decree as may be proper. And have you then and there this writ with your return thereon.

WITNESS, the Honorable WILLIAM BONDY, Chief Judge of said Court, at the Borough of Manhattan, City of New

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

York, in said District, this 21st day of September, A. D. 1955.

WILLIAM V. CONNELL,
Clerk

by .....
Deputy Clerk

(SEAL)

COOPER, OSTRIN & DE VARCO,
655 Madison Avenue, New York, N. Y.
Proctor for Libellant

13a

Exhibit A. Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

Libel.

(17) To the Honorable Judges of the United States District Court for the Southern District of New York:

IN ADMIRALTY.

The libel and complaint of

Evelyn Mc A[illegible]os and William Neff in a cause of action maritime and civil for negligence, neglect to treat, unseaworthiness, maintenance and cure, and wages,

Libellants,

against

The Canadian Pacific Steamships, Ltd., and the Canadian Pacific Railway Co.,

and

The Vessel SS "Empress of Scotland," her equipment, etc., *in rem* and *in personam*,

Respondents.

Libellants, by their proctor, Sidney Roffman, allege, upon information and belief as follows:

1. That the steamship, "*Empress of Scotland,*" is a vessel engaged in interstate and foreign commerce and is now or soon will be during the pendency of process herein, within the Southern District of New York and the jurisdiction of this Honorable Court.

2. That, upon information and belief and at all times hereinafter mentioned, the respondent, Canadian Pacific Steamships, Ltd., owned, operated and controlled a steam-

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

ship known as the "*Empress of Scotland*," a vessel of British registry and flying the flag of the United Kingdom.

(18) 3. That, upon information and belief and at all times hereinafter mentioned, the respondent, Canadian Pacific Railway Co., owned, operated, and controlled a steamship known as the "*Empress of Scotland*," a vessel of British registry and flying the flag of the United Kingdom.

4. That at all times hereinafter mentioned, the libellant, Evelyn Mc Afoos, was lawfully and properly a member of the entertainment crew and staff and business visitor aboard the vessel, "*Empress of Scotland*".

5. That on or about March 3rd 1955, while the said vessel was in the port of New York, libellant, Evelyn Mc Afoos, was lawfully aboard the said vessel, as aforesaid, and proceeding with due care and caution.

6. That by reason of the negligence of the respondent, their servants, agents and employees, and by reason of unsafe conditions on the said vessel, on or about March 3, 1955, libellant, Evelyn Mc Afoos, suffered severe injuries when she was caused to fall through an opening of the said vessel to the lower hold of the "*Empress of Scotland*".

7. That on or about the aforesaid date, libellant Evelyn Mc Afoos, was caused to fall through an opening of the said vessel, to the lower hold thereof, by reason of unseaworthy condition of the said vessel, and suffered severe and painful injuries thereby.

8. That said injuries were caused directly by (19) reason of the negligence of respondents, their agents, servants and employees in that they failed and neglected to supply the libellant, Evelyn Mc Afoos, with safe and seaworthy surroundings and facilities on the vessel, failed to

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

supply libellant, Evelyn Mc Afoos, with a sufficient number of crew and officers, failed to properly instruct libellant, Evelyn Mc Afoos, failed to properly superintend and supervise activities at the time said libellant was injured, and prior thereto, failed to promulgate and enforce proper and safe rules for the safe conduct of said work, failed to properly and adequately light the vessel, failed to warn libellant, Evelyn Mc Afoos, of the impending dangers, and failed to supply said libellant with a seaworthy vessel and safe and proper surroundings and to maintain the same in good and seaworthy condition.

9. That the aforesaid injuries were not caused by or the result of any fault or want of due care on the part of libellant.

10. That by reason of the injuries sustained, libellant, Evelyn Mc Afoos, has suffered damages in the amount of $150,000.00.

As and For a Second Cause of Action.

11. Libellant, Evelyn Mc Afoos, repeats and realleges each and every allegation hereinto set forth with the same force and effect as if same were again set forth in full.

12. Upon said libellant's becoming ill and injured as aforesaid, it became the duty of the Respondents to furnish (20) libellant, Evelyn Mc Afoos, with prompt medical care, attention and medicines at the expense of its maintenance and cure.

13. That respondents have neglected and failed to pay her the expense of her maintenance and cure while incapacitated; that the said amount of the maintenance and cure accrued will as the reasonable amount of maintenance and cure which may be expected, amount to $10,000.00, no part of which has been paid although duly demanded.

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

As and for a third cause of action on behalf of William Neff, libellant.

14. Libellant, William Neff, repeats and realleges each and every allegation hereinto set forth with the same force and effect as if same were again set forth in full.

15. That at all times herein mentioned, libellant, William Neff, had a business relation with Evelyn Mc Afoos, which was known to respondents aboard whose vessel libellants were entertainers.

16. That solely by reason of respondent's negligence, its servants, agents and/or employees, and/or the unseaworthiness of its vessel, and the injuries sustained by libellant, Evelyn Mc Afoos, as a result thereof, William Neff has been caused to suffer substantial monetary loss due to the breach of his business relationship, and has expended divers sums of money as a result thereof.

17. That by reason of the aforesaid, libellant, William Neff, has been damaged in the sum of $15,000.00.

(21) WHEREFORE, all and singular the aforesaid are true and within the admiralty and maritime jurisdiction of the United States in this Admiralty Court, libellants pray that due process be issued in the form of law according to the rules and practice of this Admiralty Court in cases of admiralty and maritime jurisdiction against the respondents citing them to appear and answer all and singular the aforesaid matters, and if the respondents cannot be found within this district, the vessel of respondents, "*Empress of Scotland*," or any other vessels, goods or credits that may be found within this district may be attached for the amount sued for with the interests and costs, that such of the foregoing as may be found within the district may be attached, that the vessel may be appro-

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

priated, condemned and sold to pay for the same and that this Court may direct payment by respondents to libellants in the sum of $150,000.00 in the first cause of action, $10,000.00 in the second cause of action, and $15,000.00 in the third cause of action, plus such additional sums as may be due for costs and interests thereon, the same being the amount sued for herein.

That process and due form of law according to the practice of this Honorable Court in cause of admiralty and maritime jurisdiction issue against the said vessel, "*Empress of Scotland*," her engines, boilers, etc., and that all persons claiming any right, title or interest in the said vessel may be cited to appear and answer all and singular the matters aforesaid and that the said vessel may be sold to pay for the demands as aforesaid with interest and costs.

(22) That this Court order, adjudge, and decree that the said respondents and vessel, "*Empress of Scotland*," pay to libellants the damages suffered by them, together with interest thereon and disbursements herein.

And that libellants have such other and further relief in the premises as in law and justice they may be entitled to receive.

Dated, New York, N. Y.
September 15, 1955.

SIDNEY ROFFMAN,
Proctor for Libellants,
Office & P. O. Address,
225 Broadway,
Borough of Manhattan,
City of New York.

COOPER, OSTRIN & DE VARCO,
Of Counsel,
655 Madison Avenue,
New York 21, New York.

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

(23) STATE OF NEW YORK }
COUNTY OF ONONDAGO } ss.:

EVELYN MC AFOOS, being duly sworn, deposes and says that she is the libellant in the within action; that she has read the foregoing Libel and Complaint and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

EVELYN MC AFOOS

Sworn to before me this
1st day of September, 1955.

MARGARET M. MARRA

MARGARET M. MARRA
Notary Public in the State of New York
Qualified in Onon. Co. No. 34-2596250
My Commission Expires March 30, 1957

Exhibit A, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

(24) STATE OF NEW YORK
COUNTY OF ONONDAGO } ss.:

WILLIAM NEFF, being duly sworn, deposes and says:

That he is the libellant in the within action.

That he has read the foregoing Libel and Complaint and knows the contents thereof.

That the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

WILLIAM NEFF

Sworn to before me this
1st day of September, 1955.

MARGARET M. MARRA

MARGARET M. MARRA
Notary Public in the State of New York
Qualified in Onon. Co. No. 34-2596250
My Commission Expires March 30, 1957

Exhibit B, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

Summons and Complaint.

(25) SUMMONS IN A CIVIL ACTION

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

EVELYN MC AFOOS and WILLIAM NEFF,
Plaintiffs,
v.
THE CANADIAN PACIFIC STEAMSHIP, LTD., and the CANADIAN PACIFIC RAILWAY CO.,
Defendants.

Plaintiff Demands a Trial by Jury.

Summons.

To the above named Defendant:

You are hereby summoned and required to serve upon Cooper, Ostrin & De Varco, plaintiffs' attorneys, whose address 655 Madison Avenue, New York 21, New York, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

WILLIAM V. CONNELL,
Clerk of Court

JOHN O. LIVINGSTON,
Deputy Clerk

Date: New York, New York
October 25, 1955

[SEAL OF COURT]

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Exhibit B, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

(26) UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

EVELYN McAFOOS and WILLIAM NEFF,
Plaintiffs,
against
THE CANADIAN PACIFIC STEAMSHIPS, LTD., and the CANADIAN PACIFIC RAILWAY CO.,
Defendants.

Plaintiff Demands a Trial by Jury.

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT SECURITY AND PREPAYMENT OF FEES. 28 U. S. CODE 1916.

Plaintiff, by her attorney, Sidney Roffman, complaining of defendants, respectfully alleges:

1. Upon information and belief, and at all times hereinafter mentioned, the defendants and each of them were corporations doing business in the City of New York with offices and principal places of business, among others, located at 581 Fifth Avenue, in the Borough of Manhattan, City and State of New York.

2. On information and belief, and at all times hereinafter mentioned, the defendant, Canadian Pacific Steamships, Ltd., owned, operated and controlled a steamship known as the SS. "*Empress of Scotland*".

3. Upon information and belief, and at all times hereinafter mentioned, defendant Canadian Pacific Railway Company, owned, operated and controlled a steamship known as the SS. "*Empress of Scotland*".

4. At all times hereinafter mentioned, the plaintiff was a crew member on the entertainment staff and was law-
(27) fully and properly a business visitor on the vessel,

Exhibit B, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

"*Empress of Scotland,*" as an entertainer pursuant to agreement between her and the defendants herein.

5. That on or about March 3, 1955, while the said vessel was in the Port of New York, plaintiff was aboard the said vessel as aforesaid and proceeding with care and caution.

6. That by reason of the negligence of the defendants, their servants, agents and employees, and by reason of unsafe conditions on the said vessel, on or about March 3, 1955, plaintiff, Evelyn McAfoos, suffered severe injuries when she was caused to fall through an opening of the said vessel to the lower hold of the "*Empress of Scotland*".

7. That on or about the aforesaid date, plaintiff, Evelyn McAfoos, was caused to fall through an opening of the said vessel, to the lower hold thereof, by reason of the unseaworthy condition of the said vessel, and suffered severe and painful injuries thereby.

8. That on or about the aforesaid date, plaintiff was caused to fall through an opening in one of the lower decks of the vessel, to the lower hold thereof, by reason of the unseaworthy condition of the said vessel, and suffered severe and painful injuries thereby.

9. That said injuries were caused directly by reason of the negligence of defendants, their agents, servants, and employees in that they failed and neglected to supply plaintiff with a sufficient number of competent employees, co-employees, and superior officers; failed to properly superintend and supervise work going on at the time plaintiff was injured, and prior thereto; failed to promulgate and enforce proper and safe rules for the safe conduct of said work; failed to warn plaintiff of the impending dangers, and failed to supply plaintiff with safe and proper (28) surroundings and to maintain the same in a safe and seaworthy condition.

Exhibit B, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

10. That the aforesaid injuries were not caused by or the result of any fault or want of due care on the part of plaintiff.

11. That suit herein is brought under the General Maritime Law as amended by Statute, and in particular the Jones Act 46 U. S. Code 688; but not limited thereto.

12. That by reason of the injuries sustained, plaintiff has suffered damages in the amount of $150,000.00.

As and for a second cause of action.

13. Plaintiff, EVELYN MCAFOOS, repeats and realleges each and every allegation hereinto set forth with the same force and effect as if same were again set forth in full.

14. Upon said plaintiff's becoming ill and injured as aforesaid, it became the duty of the defendants to furnish plaintiff with prompt medical care, attention and medicines at the expense of its maintenance and cure.

15. That defendants have neglected and failed to pay her the expense of her maintenance and cure while incapacitated; that the said amount of the maintenance and cure accrued, will as the reasonable amount of maintenance and cure which may be expected to amount to Ten Thousand ($10,000) Dollars, no part of which has been paid, although duly demanded.

As and for a third cause of action on behalf of William Neff, Plaintiff.

16. Plaintiff, WILLIAM NEFF, repeats and realleges each and every allegation hereinto set forth with the same force and effect as if same were again set forth in full.

Exhibit B, Annexed to Affidavit of Dennis P. Donovan, Read in Support of Motion.

17. That at all times herein mentioned, plaintiff WILLIAM NEFF, had a business relationship with EVELYN McAFOOS which was known to defendants aboard whose vessel plaintiffs (29) were entertainers.

18. That solely by reason of defendants negligence, its servants, agents and/or employees, and/or the unseaworthiness of its vessel, and the injuries sustained by plaintiff, EVELYN McAFOOS, as a result thereof, WILLIAM NEFF has been caused to suffer substantial monetary loss due to the breach of his business relationship, and has expended divers sums of money as a result thereof.

19. That by reason of the aforesaid, plaintiff, WILLIAM NEFF, has been damaged in the sum of Fifteen Thousand ($15,000.00) Dollars.

WHEREFORE, plaintiffs demand judgment against the defendants for the sum of One Hundred and Fifty Thousand ($150,000.00) Dollars on plaintiff, EVELYN McAFOOS' first cause of action and Ten Thousand ($10,000.00) Dollars on plaintiff, EVELYN McAFOOS' second cause of action and Fifteen Thousand ($15,000.00) Dollars on plaintiff WILLIAM NEFF's, third cause of action making in all the total sum of One Hundred and Seventy-five Thousand ($175,000.00) Dollars, together with the costs and disbursements of this action.

SIDNEY ROFFMAN,
Attorney for plaintiff,
Office & P. O. Address,
225 Broadway,
New York 7, New York.

COOPER, OSTRIN & DE VARCO,
Of Counsel,
Office & P. O. Address,
655 Madison Avenue,
Borough of Manhattan,
City of New York.